

Article 11. Informal Conferences and Hearing Procedures

§ 1750. Application and Scope.

(a) The provisions of this article apply to the procedures available to a cited person, as defined by section 1002 of this chapter, who has received a notice of a violation ordering abatement or correction of a violation of this chapter, the Health and Safety Code, or any other applicable provision of law, issued by the enforcement agency.

(b) None of the procedures for the appeal and subsequent hearing process extends the time allowed for the correction of violations noted in the original notice of violation or notice of abatement noted in subsequent notices of violation issued to the same person or about the same situation unless:

(1) the final date of compliance occurs before the later of either the date of the informal conference or the date of the written determination of the enforcement agency;

(2) the final date of compliance occurs before the later of either the date of the hearing or the date of the hearing officer's final order;

(3) an extension of time allowed for the correction of violations is contained in the written determination provided by the enforcement agency pursuant to subsection 1754(b); or

(4) an extension of the time allowed for the correction of violations is contained in the final decision issued by an enforcement agency pursuant to subsection 1757(d).

NOTE: Authority cited: Sections 18300, 18421, and 18605, Health and Safety Code. Reference: Sections 18402, 18403, 18420, and 18421, Health and Safety Code.

§ 1752. Request for Informal Conference.

(a) The following informal conference process shall be available to a cited person who is required to respond to a notice of violation ordering abatement or correction of a violation of this chapter, the Health and Safety Code, or any other applicable provision of law and shall be initiated solely at the discretion of the person addressed in the notice of violation if he or she desires to appeal or seek clarification of the notice of violation.

(b) The use of the informal conference process shall be limited to the dispute of one or more of the following issues contained in a notice of violation:

(1) The existence of one or more alleged violations,

(2) The alleged failure to correct the violations in the required time frame, and

(3) The reasonableness of the time frame within which the violations shall be corrected.

(c) If a person is in receipt of a notice of violation and chooses to request an informal conference with a representative of the enforcement agency,

(1) the person shall make a written request to the enforcement agency for an informal conference, and

(2) the person shall ensure that the enforcement agency receives the written request within ten (10) working days of the notice of violation.

(d) The written request for an informal conference shall provide the following information:

(1) The name, address, and telephone number of the person requesting the informal conference, and

(2) A brief description of the issues disputed.

(e) Within seven (7) working days of the receipt of a written request for an informal conference, the enforcement agency shall contact the person who submitted the request and shall schedule an informal conference for the earliest possible, mutually convenient time and place. The informal conference shall occur during the normal working hours and shall be held no later than twenty-one (21) working days after the enforcement agency's receipt of the written request. "Normal working hours" are from 8:00 a.m. to 5:00 p.m. on Monday through Friday, excluding holidays.

(f) The enforcement agency shall deny a request for an informal conference only if one (1) or more of the following conditions apply:

(1) The issues identified for dispute in the written request do not include at least one (1) of the issues specified in subsection (b), or

(2) The person requesting the informal conference is not available to meet with the representative of the enforcement agency within the twenty-one (21) day time period and the enforcement agency determines that good cause does not exist to postpone the informal conference.

NOTE: Authority cited: Sections 18300 and 18421, Health and Safety Code. Reference: Sections 18402, 18403, 18420 and 18421, Health and Safety Code.

§ 1754. Informal Conference.

(a) An informal conference related to a violation shall occur at the time and place scheduled and shall provide the person requesting the conference with the opportunity to explain to the representative of the enforcement agency each issue disputed and the facts and circumstances of each dispute.

(b) Within ten (10) working days of the completion of the informal conference, the enforcement agency shall provide a written notification of its determination, to the person who requested the conference.

(c) The written determination shall sustain, overrule, or modify the original notice of violation that contained each issue disputed at the informal conference. Modification may include:

(1) changes to the original violation cited,

(2) where necessary to provide a reasonable time for compliance, an extension of the time within which the modified required corrective action shall be completed. The extension of time shall not exceed thirty (30) calendar days, or such longer period of time allowed by the enforcement agency, from the date of the enforcement agency's written determination or greater period of time as determined by the enforcement agency.

(d) The written request for an informal conference shall be considered withdrawn if the person who submitted the request:

(1) does not appear at the mutually-agreed upon time and place scheduled for the informal conference, and

(2) does not notify the enforcement agency, within five (5) calendar days prior to the date on which the informal conference was scheduled, with written confirmation of the good-cause reason for not appearing at the informal conference.

(e) If the enforcement agency determines that good cause exists for a postponement, the enforcement agency shall postpone an informal conference for a period of time not to exceed fifteen (15) working days and shall notify the person in writing of the time and date of the postponed conference. Otherwise, the agency shall confirm the automatic withdrawal and, if applicable, the denial of the request due to a lack of a good-cause reason, as determined by the enforcement agency.

NOTE: Authority cited: Sections 18300, 18421 and 18605, Health and Safety Code. Reference: Sections 18402, 18403, 18420, 18421, and 18605, Health and Safety Code.

§ 1756. Request for Hearing: Appeal of Decision Rendered in Informal Conference.

(a) Any park owner or operator, cited person, or any registered owner of a unit, who has received a notice of violation ordering abatement or correction of a violation of this chapter, the Health and Safety Code, or any other applicable provision of law from the enforcement agency has the right to request a hearing on the matter before an authorized representative of the enforcement agency or that person's designee, after a decision is rendered in an informal conference or the agency has denied the request for an informal conference.

(b) The person requesting the hearing shall submit a written hearing request to the enforcement agency:

(1) within ten (10) working days of the date of the denial of a request for an informal conference, or

(2) within ten (10) working days of the date of the enforcement agency's written determination, following an informal conference, if the issues contained in the notice of violation and the request for hearing were disputed at the informal conference, or

(3) within ten (10) working days of the enforcement agency's issuance of a notice of intent to suspend a permit to operate, issued pursuant to section 18511 of the Health and Safety Code. An informal conference is not a condition precedent to a request for a hearing on a notice of intent to suspend the permit to operate and the request shall not be denied for failure to have an informal conference as referenced in Section 1756 subdivision (a), or

(4) within ten (10) working days of the written notice of refusal of the application for a permit to install an earthquake resistance bracing system pursuant to section 1377. An informal conference is not a condition precedent to a request for a hearing for refusal of the application for a permit to install an earthquake resistant bracing system and the request shall not be denied for failure to have an informal conference as referenced in Section 1756 subdivision (a).

(c) The written hearing request shall:

- (1) provide the name, address, and phone number of the appellant,
- (2) provide the appellant's reasons for requesting a hearing,
- (3) summarize each issue to be disputed at the hearing, and
- (4) state the remedy the appellant is seeking.

(d) Upon receipt of a request for a hearing from the cited person or entity, the enforcement agency shall set a time and place for the hearing, shall provide the appellant with written notice of the scheduled time and place of the hearing, and shall provide a statement of the agency's selection of the informal hearing procedures to be applied at the hearing. The enforcement agency shall include a copy of the agency's informal hearing procedures, as required pursuant to Government Code sections 11425.10 and 11445.30.

(1) The enforcement agency shall provide the time and place of the hearing in a written notice to the appellant within fifteen (15) working days of receipt of the request.

(2) The hearing shall commence within fifteen (15) working days of the date of the written notice of the scheduled hearing sent by the enforcement agency.

(3) The appellant shall have the right to apply to the enforcement agency for the postponement of the date of the hearing for a reasonable amount of time. The appellant shall provide a good-cause reason for the request.

(4) The enforcement agency shall grant a request for postponement if it determines that the appellant has good-cause reason for the postponement.

(e) In the event that a cited violation constitutes an imminent hazard representing an immediate risk to life, health and safety of persons or property which requires immediate correction, a hearing shall not be permitted and a request for a hearing shall not extend the time for the correction of the violation.

(f) Upon receipt of the request for hearing from the cited person or entity, the enforcement agency shall not initiate any judicial or administrative action related to the defect or defects appealed until after the hearing. However, if the defect or defects cited become an imminent hazard representing an immediate risk to life, health, and safety of persons or property which require immediate correction, the enforcement agency may cancel the hearing, demand immediate abatement or correction, and initiate any appropriate judicial or administrative action related to the defect or defects.

(g) If the request for hearing is not received within ten (10) days from the date of personal service or acknowledgment of receipt by mail of the notice, the enforcement agency shall have the discretion to continue abatement proceedings.

NOTE: Authority cited: Sections 1830, 18421, and 18605 Health and Safety Code. Reference: Sections 18402, 18403, 18420, 18421, and 1860, Health and Safety Code.

§ 1757 Hearing.

(a) At the time and place of the hearing, the hearing officer shall hear the testimony of, and accept evidence from the following: the legal owner of the property or park owner or operator, the cited person or their respective representative, and any other person with information or testimony relevant to the final notice to abate. The testimony shall be limited to the violations identified in the cited unit, structure, or property. Prior to the hearing, the enforcement agency shall provide all evidence supporting the abatement action to the hearing officer. If requested by the hearing officer, the appellant also may provide written information prior to the hearing, concurrent with a copy to the enforcement agency's representative identified by the hearing officer.

(b) The hearing shall provide the appellant with the opportunity to be heard by the hearing officer designated by the enforcement agency and to show cause why the notice of violation should be modified or withdrawn.

- (1) The appellant shall be entitled to call witnesses to testify at the hearing.

(2) The appellant shall be entitled to be represented by legal counsel at the hearing.

(3) The hearing officer shall regulate the course of the proceeding.

(4) The hearing officer: shall permit the parties and may permit others to offer written or oral comments on the issues; may limit the use of witnesses, testimony, evidence, and argument; and may limit or eliminate the use of pleadings, intervention, discovery, prehearing conferences and rebuttal, consistent with Government Code sections 11445.10 and 11445.40.

(c) If the appellant does not appear at the hearing, the enforcement agency shall have the authority to proceed immediately with administrative or judicial action to secure compliance or abatement.

(d) Within ten (10) working days after the conclusion of the hearing, the hearing officer shall provide a final order to the appellant in the form of a written decision. The final order shall:

(1) sustain, modify, or withdraw the notice of violation, and

(2) shall clearly state the enforcement agency's findings upon which the final order is based.

The decision shall be mailed by first class mail to all parties to the hearing. If the decision sustains or modifies the final notice to abate, the hearing officer may establish new dates and compliance schedules.

(e) At the discretion of the hearing officer, the enforcement agency shall post a copy of the written decision in a conspicuous place on the property or unit.

NOTE: Authority cited: Sections 18300 and 18421, Health and Safety Code. Reference: Sections 18402, 18403, 18420, 18421, 18513 and 18605, Health and Safety Code.

§ 1758. Petition to Review Order of Local Enforcement Agency following a Hearing.

(a) A park owner or operator, or the registered owner of a unit shall be entitled to petition the department to review and investigate, as necessary, the enforcement activities of the local enforcement agency if he or she:

(1) has received a notice of violation issued by an enforcement agency other than the department, and

(2) has received a final order from the local enforcement agency following a hearing.

(b) The petition shall be in writing and shall include the following:

(1) a copy of the original notice of violation;

(2) a copy of the enforcement agency's written determination, if an informal conference was held;

(3) a copy of the enforcement agency's final order if a hearing was held; and

(4) a clear, concise explanation of the issues that the petitioner continues to dispute.

(c) The department shall deem the petition to be a request to exercise the department's responsibility to monitor local enforcement activity pursuant to section 18306 of the Health and Safety Code.

(1) Within sixty (60) working days of the receipt of the petition, the department shall review the petition and provide the petitioner with written notice of whether the activities of the local agency require investigation by the department.

(2) If the department has determined that the activities of the local agency require investigation by the department, the written notice to the petitioner shall provide a time frame for the investigation.

(3) If the department investigates the enforcement activities of a local agency in response to one (1) or more petitions provided pursuant to subsection (a), the department shall notify each petitioner within sixty (60) days of the results of the department's investigation.

(d) If the department finds that the notice of violation, written determination, and/or final order issued by the local enforcement agency reflect(s) non-enforcement or over-enforcement of the law, the department shall initiate corrective action pursuant to the provisions of subdivision (d) of section 18300 of the Health and Safety Code.

(e) A petition filed pursuant to this section shall not extend the time for correction of the violation as provided in the original or any subsequent notice of violation issued by the local enforcement agency unless the department, based on the petition and materials submitted with the petition, determines there is a high likelihood that the local enforcement agency was incorrect in issuing the notice of violation.

NOTE: Authority cited: Sections 18300, and 18421, Health and Safety Code. Reference: Sections 18306, 18420, and 18421, Health and Safety Code.

§1759 Time to Bring Action

Any cited person, owner, or other aggrieved person having any objections as to any proceedings or actions undertaken by the hearing officer conducting the hearing, or the enforcement agency in ordering abatement or correction of any violation, shall bring an action in any court of competent jurisdiction within thirty (30) days after receipt of the final order or decision. For the purposes of this section, "aggrieved person" or entity is any person that claims to have been injured by actions of the enforcement agency that would permit the person to file a lawsuit in court.

NOTE: Authority cited: Sections 18300 and 18605, Health and Safety Code. Reference: Section 18402, 18403, 18420, 18421, and 18605, Health and Safety Code.